XII-189 / (Jail)
C. J. P. R. 11/94/2,000

GA 52/96

(2)

CF0000061206

APPEAL OF PRISONER

Division Bench (Criminal)

No. 30411/4-B Name [illegible]

Father's name [illegible]

Residence [illegible] Age 37 વર્ષ

Sentenced to આજીવન કારાવાસની સજા On 24/11/95

Under section 147, 148, 149, 302 IPC by [illegible]

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... 24/11/95

2 Date on which copy received ... 8/12/95

3 Date on which Appeal sent ... 12/95

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

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No. 30411/4-B Name [illegible]

Confined in [illegible] Jail [illegible]

No. 1197/1442 Dated ... 1995 11/12/95

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ [illegible]

Together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

[illegible]
13/12/94

for Superintendent,
Central Jail, Raipur. (M.P.)

Date of receipt in ... office ...

Date of receipt record to accompany the ... with the Memo

Memo of Appeal to the Appellate court ...

No ... Dated ... 199 ...

Forwarded to the ... 5 JAN 1996 ...

Date of receipt in Appellate Court ...

High Court of Madhya Pradesh
JABALPUR
Reg. No. 18
Receipt Clerk
High Court, Jabalpur

(P. T. O.)

(21)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.R.No. 52/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

19.12.2006

Shri Abhay Tiwari, Advocate for the appellant

Shri Akhil Mishra, P.L. for the State.

"I.A. No.1628/06 for early hearing of the matter is allowed, as the accused is stated to be in detention since 6.6.1994.

Heard.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 24.11.1995 passed by the Additional Sessions Judge, Khairagarh in S.T.No.136/94, whereby the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 449 & 302 of the I.P.C. sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months on both counts.

The case of the prosecution, in brief, is that on 5.6.1994 at about 6.00 a.m. calf of deceased Kunjbai entered the house of accused, therefore, Kunjbai went to the house of accused to bring back her calf. At that time accused was at his house, he said something to Kunjbai on which altercation took place between them, in that process the accused picked up the pickaxe (Kudali) and attacked the deceased with the handle of that pickaxe (Kudali). When Kunjbai ran to her house, accused chased her and there also he inflicted injuries on

P.T.O.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

her. Kunjbai was taken to the hospital for treatment. Matter was reported to the Police Station Bodla where the offence under Section 307 of the I.P.C. was registered, however, on receiving merg intimation, offence was converted into Section 302 of the I.P.C.

After completion of usual investigation charge sheet was filed against the accused in the court of Judicial Magistrate 1st Class, Kawardha, who in turn committed the case to learned Sessions Judge, Rajnandgaon from where the Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused examined eight witnesses. Statement of accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant herein, as afore-mentioned.

We have heard Mr. Abhay Tiwari, Advocate for accused/appellant and Mr. Akhil Mishra, Panel Lawyer for the State.

Learned counsel for the accused/appellant has not disputed the homicidal death of Kunjbai. Apart from that, from the evidence of PW-8 Cheti Bai, who is daughter of deceased & witnessed the crime, and the medical evidence of Dr. S.R. Mandavi (PW-5), it is established that the death of Kunjbai was homicidal.

As far as involvement of the accused/appellant in crime in question is concerned, Cheti Bai (PW-8) has categorically stated that on the fateful day

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

she alongwith her mother were at their residence, as their calf entered the kitchen garden of the accused, therefore, some altercation took place between her mother & accused, in that process, accused picked up the pickaxe (Kudali) and attacked her mother with the said pickaxe (Kudali). Her mother sustained injuries on her head. She informed the Village Kotwar & Village Patel. In the cross-examination of this witness, the defence has not been able to elicit anything, which discredit the evidence of this witness. Moreover, the evidence of this witness has been corroborated by the medical evidence of Dr. S.R. Mandavi (PW-5), who has stated that he conducted the postmortem on the body of deceased Kunjbai, noticed as many as 11 injuries out of that 7 injuries were on the various parts of the head and there was a fracture of the skull bone and that was the reason of the death of Kunjbai. Therefore, the involvement of the accused in crime in question is established.

Learned counsel for the accused/appellant argued that the accused attacked the deceased in a sudden quarrel, therefore, there was no intention of the accused to cause death of Kunjbai.

On the other hand, learned counsel for the State supported the judgment of the trial court.

In order to appreciate the argument advanced by learned counsel for the appellant, we have perused the evidence of eyewitness PW-8 Cheti Bai, who has categorically stated that their calf entered the kitchen garden of the accused, when her mother went to take back the calf, accused started quarrelling with her mother and in that process assaulted her mother with the handle of pickaxe (Kudali). Even the accused chased her mother to her house

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and continued to attack there also. The medical evidence of Dr. S.R. Mandavi (PW-5) shows that as many as 11 injuries were inflicted on the body of Kunjbai out of which 07 were on the head i.e. vital part of the body and even skull bone was fractured. Therefore, the manner in which the accused attacked the deceased mercilessly repeatedly 11 times in a cruel manner, the case of the accused is not covered under the Exception-IV of Section 300 of IPC. The intention of the accused was writ large to commit the murder of Kunjbai.

In the result, we do not find any illegality or infirmity in the judgment of conviction and order of sentence passed by the trial court. The appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

P.T.O.